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# One Indictment Dropped, One Added in Spying Case

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The Justice Department dropped a strongly worded seven-count indictment against two men accused of spying for Vietnam and issued a new indictment yesterday, adding a less serious offense to the espionage charges.

A federal grand jury reindicted the men on a new charge that they passed classified State Department cables to a network of spies for Hanoi, an offense that carries a penalty of five years in jail. The espionage charges carry penalties of life in prison.

Defense lawyers said the new indictment confirms their earlier allegations that the government is unable to prove the stolen cables were vital to the national defense, a necessary element in proving espionage.

"The government seems to be changing its position almost hourly," said an angry Warren L. Miller, a lawyer for Ronald Louis Humphrey, a United States Information Agency employee accused of passing the cables to a Vietnamese citizen in Washington. Justice Department lawyers refused yesterday to provide an explanation for the new charge, which is much less severe than any of the counts in the first indictment. Earlier, one prosecutor had said that the new indictment was needed to clarify some of the earlier charges.

Humphrey and David Truong, a former Vietnamese antiwar activist, were arrested and indicted Jan. 31 on charges of stealing cables marked "confidential" and "secret" from the USIA offices in Washington and passing them to Vietnamese officials in Paris.

The documents listed in the indictment include discussions of the Paris negotiations between the United States and the Vietnamese over normalization of relations between the two countries.

Both have entered pleas of innocent to all charges.

The defense has continually criticized aspects of the way the prosecution has handled its case. Last week the government filed notice that it would not use any of the massive amount of evidence gathered by wiretap and electronic surveillance during the course of the FBI's lengthy investigation. This evidence was approved personally by President Carter and Attorney General Griffin Bell without seeking court warrants.

The next day, however, the government filed a new motion reversing that stand.

The defense had attacked the Jan. 31 indictment from the beginning on several legal grounds, including the choice of Alexandria and the Eastern District of Virginia as the location for the trial. Many of the activities alleged in the indictment took place in the District of Columbia.

Several inconsistencies were noted and the defense complained of vague wordings of locations and times but according to Miller, the prosecution orally assured him that it would stand by its original indictment. "And then without proper notice," Miller said, "they get a superseding indictment and admit by implication the original's defectiveness."

U.S. Attorney William B. Cummings said the government did not make the final decision to seek new indictments until last night, when Attorney General Bell was consulted for his approval.